Supreme Court, U.S.
FILED

No. 98- 98 376 AUG 31 1998

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

WARNER JACKSON, *et al.*,
Petitioners,

v.

JOHN T. BENSON, *et al.*,
Respondents.

MILWAUKEE TEACHERS' EDUCATION ASSOCIATION, *et al.*,
Petitioners,

v.

JOHN T. BENSON, *et al.*,
Respondents.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

JOHN T. BENSON,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

---

PETITION FOR A WRIT OF CERTIORARI

JEFFREY J. KASSEL
LAFOLLETTE & SINYKIN
One East Main Street
Suite 500
P.O. Box 2719
Madison, WI 53701
(608) 257-3911

WILLIAM H. LYNCH
312 East Wisconsin Ave., #210
Milwaukee, WI 53202
(414) 289-9200

ROBERT H. CHANIN
(Counsel of Record)
DAVID M. SILBERMAN
JOHN M. WEST
ALICE O'BRIEN
BREDHOFF & KAISER, P.L.L.C.
1000 Connecticut Ave., N.W.
Suite 1300
Washington, D.C. 20036
(202) 833-9340
Attorneys for Petitioners

(Additional counsel listed on inside cover)

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

31pp

RICHARD PERRY
RICHARD SAKS
PERRY, LERNER & QUINDEL
823 North Cass Street
Milwaukee, WI 53202
(414) 272-7400

BRUCE MEREDITH
CHRIS GALINAT
WISCONSIN EDUCATION
ASSOCIATION COUNCIL
P.O. Box 8003
Madison, WI 53708
(608) 276-7711

ELLIOT M. MINCBERG
JUDITH E. SCHAEFFER
PEOPLE FOR THE AMERICAN WAY
FOUNDATION
2000 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 467-4999

TIMOTHY HAWKS
SHNEIDMAN, MYERS, DOWLING &
BLUMENFIELD
(Wisconsin Federation of
Teachers)
700 West Michigan, Suite 500
P.O. Box 442
Milwaukee, WI 53201
(414) 271-8650

PETER M. KONEAZNY
AMERICAN CIVIL LIBERTIES UNION
OF WISCONSIN FOUNDATION,
INC.
207 East Buffalo Street
Suite 325
Milwaukee, WI 53202
(414) 272-4032

STEVEN R. SHAPIRO
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street
New York, N.Y. 10004
(212) 549-2500

STEVEN K. GREEN
AMERICANS UNITED FOR
SEPARATION OF CHURCH
AND STATE
1816 Jefferson Place, N.W.
Washington, D.C. 20036
(202) 466-3234

JAMES H. HALL, JR.
HALL, PATTERSON & CHARNE
324 East Wisconsin Ave., #1200
Milwaukee, WI 53202
(414) 273-2001

QUESTIONS PRESENTED

The State of Wisconsin has enacted a private school voucher program for the City of Milwaukee. Under this program, the State will expend millions of tax dollars each school year to pay for thousands of elementary and secondary school students to attend private schools, the overwhelming majority of which are pervasively sectarian, and the private schools that receive these tax dollars will be free to use them for any secular or sectarian purposes they deem appropriate. The Supreme Court of Wisconsin held that the Milwaukee voucher program does not violate the Establishment Clause of the First Amendment to the United States Constitution. The following questions are presented for review:

1. Does the Milwaukee voucher program violate the Establishment Clause?

2. Is the decision of the Supreme Court of Wisconsin in conflict with this Court's decision in *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973), and, if so, does *Nyquist* continue to state the law?

PARTIES

This Petition for a Writ of Certiorari is filed on behalf of the following Petitioners, who, in three consolidated cases, were plaintiffs in the trial court and respondents in the Wisconsin Supreme Court: Warner Jackson, Jennifer Evans, Wendell Harris, The Reverend Andrew Kennedy, Rabbi Isaac Serotta, Ceilanne Libber, Father Thomas J. Mueller, Reverend John N. Gregg, Diane Brewer, Coleen Beaman, Mary Morris, Penny Morse, Kathleen Jones, Philip Jones, Milwaukee Teachers' Education Association, by its President, M. Charles Howard, Michael Lengyel, Donald Lucier, Tracy Adams, Milwaukee Public Schools Administrators and Supervisors Council, Inc., by its Executive Director, Carl A. Gobel, People for the American Way, by its Executive Vice President and Legal Director, Elliot M. Mincberg, John Drew, Susan Endress, Richard Riley, Jeanette Robertson, Vincent Knox, Bertha Zamudio, James Johnson, Robert Ullman, Sally F. Mills, National Association for the Advancement of Colored People, Felmers O. Chaney, Lois Parker, on behalf of herself and her minor child, Rashaan Hobbs, Derrick D. Scott, on behalf of himself and his minor children, Deresia C.A. Scott and Desmond L.J. Scott, Constance J. Cherry, on behalf of herself and her minor children, Monique J. Branch, Monica S. Branch, and William A. Branch.

Respondents, who were defendants in the trial court and petitioners in the Wisconsin Supreme Court, are: John T. Benson, Superintendent of Public Instruction of Wisconsin, Wisconsin Department of Public Instruction, and James E. Doyle, Attorney General of Wisconsin. Additional respondents are the following persons who intervened as defendants in the trial court and were petitioners in the Wisconsin Supreme Court: Marquelle Miller, Cynthia Miller, Angela Gray, Zachery Gray, Shon Richardson, George Richardson, Latrisha Henry, Faye Henry, Reigne Barrett, Valerie Barrett, Candice Williams,

Senton Williams, Clintrai Giles, Sharon Giles, Parents for School Choice, Pilar Gonzalez, Dinah Cooley, Julie Vogel, Kate Helsper, Blong Yang, Gail Crockett, Yolanda Lassiter, and Jeanine Knox.

The following persons were also parties to this case or a closely related proceeding at earlier stages of the litigation: Representative Annette Polly Williams, as an intervening defendant in the trial court; and State of Wisconsin *ex rel.* Tommy G. Thompson, Governor, as petitioner in an original action before the Wisconsin Supreme Court.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
A. Statement of Facts	2
B. Proceedings Below	6
REASONS FOR GRANTING THE WRIT	9
I. THE DECISION OF THE COURT BELOW IS IN DIRECT AND IRRECONCILABLE CONFLICT WITH THE DECISION OF THIS COURT IN *COMMITTEE FOR PUBLIC EDUCATION v. NYQUIST*; THIS COURT SHOULD CLARIFY WHETHER THAT CASE CONTINUES TO STATE THE LAW	11
II. THIS COURT SHOULD DETERMINE WHETHER THE AMENDED MPCP—WHICH IS AN IMPORTANT PROGRAM IN ITS OWN RIGHT—IS CONSTITUTIONAL, AND SHOULD ANSWER THE CONSTITUTIONAL QUESTION THAT SHROUDS THE NATIONAL POLICY DEBATE OVER VOUCHER PROGRAMS	20
CONCLUSION	23

TABLE OF AUTHORITIES

CASES Page

Agostini v. Felton, 117 S. Ct. 1997 (1997) 14-19
Almond v. Day, 89 S.E.2d 851 (Va. 1955) 15
Bagley v. Maine Dep't of Educ., No. CV-97-484 (Me. Superior Ct., Apr. 20, 1998), *appeal pending*, No. CUM-98-281 (Me.) 21
Board of Educ. v. Allen, 392 U.S. 236 (1968) 15
Bowen v. Kendrick, 487 U.S. 589 (1988) 14
Chittenden Town School Dist. v. Vermont Dep't of Educ., No. S0478-96 RcC (Vt. Superior Ct., Rutland Cty., June 27, 1997), *appeal pending*, No. 97-275 (Vt.) 21
Committee for Public Education v. Nyquist, 413 U.S. 756 (1973) ..... *passim*
Essex v. Wolman, 409 U.S. 808 (1972), *aff'g* 342 F. Supp. 399 (S.D. Ohio 1972) 14
Giacomucci v. Southeast Delco School Dist., No. 98-5805 (Pa. Common Pleas Ct., Delaware Cty.) 21
Hunt v. McNair, 413 U.S. 734 (1973) 15
Kotterman v. Killian, No. CV-97-0412-SA (Ariz.) .. 21
Levitt v. Committee for Public Educ., 413 U.S. 472 (1973) 14
Meek v. Pittenger, 421 U.S. 349 (1975) 13, 14
Mueller v. Allen, 463 U.S. 388 (1983) 16, 18
People ex rel. Klinger v. Howlett, 305 N.E.2d 129 (Ill. 1973) 15
Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477 (1989) 15
Roemer v. Board of Public Works, 426 U.S. 736 (1976) 14
Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819 (1995) 14, 16, 18
School Dist. of Grand Rapids v. Ball, 473 U.S. 373 (1985) 14, 18, 19
Simmons-Harris v. Goff, No. 96APE08-982, 1997 WL 217583 (Ohio Ct. App., May 1, 1997), *appeal pending*, No. 97-1117 (Ohio) 21
Sloan v. Lemon, 413 U.S. 825 (1973) 14

TABLE OF AUTHORITIES—Continued

Page

State ex rel. Rogers v. Swanson, 219 N.W.2d 726 (Neb. 1974) 15
State ex rel. Thompson v. Jackson, 199 Wis. 2d 714, N.W.2d 140 (1996) 2, 7
Strout v. Commissioner, Maine Dep't of Educ., No. 97-259-P-H (D. Me., Aug. 11, 1998), *appeal pending*, No. —— (1st Cir.) 21
Tilton v. Richardson, 403 U.S. 672 (1971) 14
Weiss v. Bruno, 509 P.2d 973 (Wash. 1973) 15
Witters v. Washington Dep't of Serv. for Blind, 474 U.S. 481 (1986) 16
Wolman v. Walter, 433 U.S. 229 (1977) 14
Zobrest v. Catalina Foothills School Dist., 509 U.S. 1 (1993) 13, 16, 18

CONSTITUTIONS, STATUTES, AND RULES

U.S. Const. amend. I ..... *passim*
28 U.S.C. § 1257 2
Sup. Ct. R. 10(c) 9
Wis. Const. art. I, § 18 7
Wis. Stat. § 119.23 ..... *passim*
Wis. Stat. § 119.23(4) 4, 5
Wis. Stat. § 119.23(5) (a) 6

MISCELLANEOUS

Clint Bolick, *School Choice and the Supreme Court*, Wall St. J., June 15, 1998 11
Ethan Bronner, *Wisconsin Upholds Vouchers in Church Schools*, N.Y. Times, June 11, 1998 20
Christopher L. Eisgruber & Lawrence G. Sager, *Congressional Power and Religious Liberty After City of Boerne v. Flores*, 1997 Sup. Ct. Rev. 79 17
Pete Hutchison, *The Right Education Revolution*, Washington Times, June 15, 1998 20
Harlan A. Loeb & Debbie N. Kaminer, *God, Money and Schools: Voucher Programs Impugn the Separation of Church and State*, 30 J. Marshall L. Rev. 1 (1996) 20
Brief of Appellee Warren M. Anderson, *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973) 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

No. 98-

WARNER JACKSON, *et al.*,
Petitioners,

v.

JOHN T. BENSON, *et al.*,
Respondents.

MILWAUKEE TEACHERS' EDUCATION ASSOCIATION, *et al.*,
Petitioners,

v.

JOHN T. BENSON, *et al.*,
Respondents.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

JOHN T. BENSON,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

---

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully request that a writ of certiorari issue to review the judgment of the Supreme Court of Wisconsin in *Jackson v. Benson, Milwaukee Teachers' Education Association v. Benson, National Association*

for the Advancement of Colored People v. Benson, 218 Wis. 2d 835, 578 N.W.2d 602 (1998).

OPINIONS BELOW

The opinion of the Supreme Court of Wisconsin is reported at 218 Wis. 2d 835, 578 N.W.2d 602, and is reproduced in the Appendix to this Petition at 1a. The opinion of the Court of Appeals of Wisconsin is reported at 213 Wis. 2d 1, 570 N.W.2d 407, and is reproduced in the Appendix at 59a. The opinion of the Dane County Circuit Court is unreported, and is reproduced in the Appendix at 138a. The earlier opinion of the Supreme Court of Wisconsin in *State ex rel. Thompson v. Jackson* is reported at 199 Wis. 2d 714, 546 N.W.2d 140, and is reproduced in the Appendix at 189a.

JURISDICTION

The judgment of the Supreme Court of Wisconsin was entered on June 10, 1998. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the United States Constitution provides in pertinent part as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The text of Wis. Stat. § 119.23 is reproduced in the Appendix at 192a.

STATEMENT OF THE CASE

A. Statement of Facts

This case presents an Establishment Clause challenge to the 1995 amendments to the Milwaukee Parental Choice Program ("Amended MPCP"), Wis. Stat.

§ 119.23. Under the Amended MPCP, the State of Wisconsin will divert millions of tax dollars each school year from state aid that otherwise would be provided to the Milwaukee Public Schools (as much as $70,000,000 during the 1998-99 school year alone), and use that money to pay for up to 15,000 students to attend private schools, the overwhelming majority of which are pervasively sectarian.

The Amended MPCP had its genesis in a much smaller, exclusively nonsectarian, program enacted in 1989 ("Original MPCP"). The Original MPCP, as amended in 1993, permitted Milwaukee students from low-income families—up to a maximum of 1.5% of the approximately 100,000 total student population of the Milwaukee Public Schools—to attend at state expense private nonsectarian schools in Milwaukee that chose to participate in the Program. For each student attending a private school pursuant to the Program, the State paid directly to the participating private school an amount equal to the state aid that otherwise would have been paid to the Milwaukee Public Schools. The private school was not permitted to charge any additional tuition.

The 1995 amendments opened the Program to all sectarian private schools in Milwaukee and increased the cap on the number of participating students from 1.5% of the Milwaukee Public Schools student population (approximately 1,500) to 15% (approximattely 15,000). The stipulated record in this case establishes that, as of the 1995-96 school year, 122 private schools in Milwaukee were eligible to participate in the Amended MPCP. Of these 122 schools, 33 were nonsectarian, and 17 of those had elected to participate in the Original MPCP. The remaining 89 private schools eligible to participate in the Program—comprising 73 percent of the total number of Milwaukee private schools—were sectarian. During the 1994-95 school year, these sectarian schools enrolled ap-

proximately 84 percent of all Milwaukee private-school students.

The stipulated record includes as exhibits handbooks, mission statements, and other written materials issued by many of the sectarian private schools that had notified the Wisconsin Department of Public Instruction of their intent to participate in the Amended MPCP during the 1995-96 school year. The parties have agreed that these materials accurately describe the purpose, structure, and operation of those schools. As the trial court found, these materials make it clear that the "mission" of those schools is "religious," App. 147a, that "religious doctrine will be instilled in their students," *id.*, and that "one of the primary means by which these schools accomplish their religious missions is by integrating the religious and secular aspects of the schools' educational programs." App. 149a.[1] In addition, as the court of appeals found, these materials "indicate that many [of these schools] charge tuition that is hundreds of dollars less than what the schools deem to be their actual cost of educating each student," and are able to do so by virtue of subsidies they receive from the churches or other religious organizations that operate them. App. 67a.

Under the Amended MPCP, for each student enrolled under the Program the State pays "an amount equal to the private school's operating and debt service cost per pupil that is related to educational programming," Wis. Stat. § 119.23(4), so long as that amount does not

---

[1] By way of example, the Holy Redeemer Christian Academy's Parent Handbook describes the school as "an integral part of the ministry of Holy Redeemer Church of God in Christ," at which "all learning will be rooted in the understanding of faith in God and power of His word." The school's "goals and objectives" include "[t]o lead the student to a saving knowledge of Jesus Christ" and "[t]o present all academic subject areas in light of the Scriptures." *See also* App. 147a-151a (compilation by trial court of excerpts from other such materials).

exceed the per-pupil state aid provided to the Milwaukee Public Schools—which, during the 1995-96 school year, was approximately $3,650. The Amended MPCP does not limit this payment to the actual tuition charged; thus, as the parties have stipulated, the State will pay most of the participating sectarian schools *more* per pupil than those schools would otherwise charge in tuition.

Multiplied by the cap of roughly 15,000 eligible students, the Amended MPCP reimbursement formula would have resulted in upwards of $55 million of public funds being diverted from the budget of the Milwaukee Public Schools and paid to private schools instead, had the program taken effect during the 1995-96 school year as originally scheduled. Because of increases in the amount of per-pupil state aid since 1995, the cost of the Program could be as much as $70 million during the 1998-99 school year.

The State's expenditures under the Amended MPCP are by checks made payable to the parents of the students, rather than to the private schools as was the case under the Original MPCP. The checks are, however, mailed directly to the private schools, and the parents are then required by law to "restrictively endorse the check for the use of the private school." Wis. Stat. § 119.23(4).

The Amended MPCP does not require that the public funds provided to participating sectarian schools be used only for secular purposes, nor does it otherwise restrict the uses to which these funds may be put by the schools or the churches that operate them. These funds may be used for any secular or sectarian purposes the schools deem appropriate, including the payment of salaries and expenses of employees affiliated with the schools' religious mission, the purchase of religious literature and materials, and the maintenance and construction of facilities used for religious purposes.

The funding provided by the Amended MPCP is limited to students who enroll in private schools; the Program provides no benefits for students who remain in the Milwaukee Public Schools. *See* Wis. Stat. § 119.23. To the contrary, for each student enrolled in a private school under the Amended MPCP, the State proportionately reduces its payment to the Milwaukee Public Schools, without regard to whether the school district experiences a proportionate reduction in its costs. Wis. Stat. § 119.23(5)(a).

B. Proceedings Below

On August 1, 1995, a week after enactment of the Amended MPCP and less than a month before it was scheduled to take effect, two lawsuits were filed by various parents, taxpayers, teachers, members of the clergy, and certain organizations that represent the individual plaintiffs. Another group of plaintiffs, the National Association for the Advancement of Colored People ("NAACP"), *et al.*, subsequently filed a separate lawsuit. In addition to advancing several claims under the Wisconsin Constitution, each of the three complaints sought to have the Amended MPCP struck down as violative of the Establishment Clause of the First Amendment to the United States Constitution.[2]

The three lawsuits were consolidated, and two groups of parents and associated organizations—Parents for

---

[2] The NAACP petitioners also alleged a violation of the Equal Protection Clause of the Fourteenth Amendment. The trial court stayed further proceedings on that claim pending resolution of the other issues, and the claim was not addressed by the Wisconsin Court of Appeals. Treating NAACP's Equal Protection claim as a facial challenge, the Wisconsin Supreme Court, on its own motion, dismissed the claim notwithstanding that it had not been considered by the lower courts. App. 52a-56a. Although the NAACP petitioners believe the court's disposition of their Equal Protection claim was erroneous, that claim is not raised here.

School Choice, *et al.*, and Marquelle Miller, *et al.*— were permitted to intervene on the side of defendants.

After plaintiffs in the first two lawsuits moved for a preliminary injunction, the Wisconsin Supreme Court, on petition of Governor Tommy G. Thompson, assumed original jurisdiction over the matter and stayed further proceedings in the trial court. Shortly thereafter, the supreme court preliminarily enjoined implementation of the Amended MPCP. All parties agreed to a stipulated factual record, and following briefing and argument of the state and federal constitutional issues, on March 29, 1996, an equally divided supreme court dismissed the original action, lifted the stay of proceedings in the trial court, and ordered that the preliminary injunction remain in place. *State ex rel. Thompson v. Jackson*, App. 189a.[3]

The parties then filed cross-motions for summary judgment in the trial court, again arguing the constitutionality of the Amended MPCP under both the United States and Wisconsin Constitutions. Following briefing and argument, the trial court ruled, on January 15, 1997, that the Amended MPCP was unconstitutional under several provisions of the Wisconsin Constitution, including its religion clause, Art. I, § 18. App. 138a. Having struck down the Amended MPCP on state constitutional grounds, the trial court found it unnecessary to address petitioners' further contention that the Program also violated the Establishment Clause of the First Amendment to the United States Constitution. *See* App. 139a.

On August 22, 1997, the Wisconsin Court of Appeals affirmed, with one judge dissenting. App. 59a. Although

---

[3] With one justice not participating, three justices would have held the Amended MPCP unconstitutional under the religion and education clauses of the Wisconsin Constitution, without reaching the federal issue, while the other three justices believed the Program withstood challenge on all federal and state grounds presented. App. 190a.

the court of appeals rested its decision on the Wisconsin religion clause, and found it unnecessary to decide the First Amendment issue that the parties also had briefed and argued, App. 87a, the court believed it appropriate, in construing the state constitution's religion clause, to "consult United States Supreme Court cases applying the 'primary effect' test." App. 80a. In so doing, the court followed the holding of *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973), which struck down a private-school voucher program that, the court of appeals found, "closely parallels the amended program here under review." App. 81a. The court of appeals concluded that this Court's more recent cases on which the State had relied "do not encompass facts nearly so close to those before us as did *Nyquist*." App. 83a.

The State and the intervenors-defendants appealed to the Wisconsin Supreme Court. The parties again briefed and argued both the federal and state constitutional issues. On June 10, 1998, the court reversed, upholding the Amended MPCP against all challenges by a vote of 4-2. App. 1a.[4]

Addressing the constitutionality of the Amended MPCP under the Establishment Clause, the Wisconsin Supreme Court surveyed this Court's Establishment Clause cases, and found those cases to rest on what it termed the principles of "neutrality and indirection." App. 17a. The court explained its position as follows:

> [S]tate educational assistance programs do not have the primary effect of advancing religion if those programs provide public aid to both sectarian and nonsectarian institutions (1) on the basis of neutral, secular criteria that neither favor nor disfavor religion; and (2) only as a result of numerous private choices of the individual parents of school-age chil-

---

[4] The two dissenting justices would have affirmed on the basis of the reasoning of the court of appeals. App. 58a.

> dren. The amended MPCP is precisely such a program. [App. 25a.]

On this view of the Establishment Clause, the court deemed it "irrelevant to our inquiry"—*i.e.*, to determining whether the Amended MPCP would have the "primary effect of advancing religion"—that, in practical terms, the principal option that would be offered to students under the Amended MPCP would be to enroll in a pervasively sectarian private school; that the vast majority of students participating in the Amended MPCP would be enrolled in such schools; and that most of the public funds made available under the Amended MPCP would flow to those schools to be used for any secular or religious purposes they deemed appropriate. App. 28a, n.17.

Although it agreed with the court of appeals that the Amended MPCP "closely parallels" the private school voucher program held to be unconstitutional in *Nyquist*, the Wisconsin Supreme Court opined that the *Nyquist* program was distinguishable from the Amended MPCP. As the court put it, the former program "directed aid exclusively to private schools and their students," and hence, in the court's view was "non-neutral"; in contrast, the court concluded that "[t]he amended MPCP, viewed in its surrounding context, merely adds religious schools to a range of pre-existing educational choices available to [Milwaukee] children." App. 19a n.9.

REASONS FOR GRANTING THE WRIT

In this case, the Wisconsin Supreme Court "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). That question is central both to the development of this Court's Establishment Clause jurisprudence and to the formulation of this nation's education policy, and it therefore warrants the attention of this Court.

1. In *Nyquist, supra,* this Court struck down a private-school voucher program that had been enacted by the State of New York, holding that the use of public money to "subsidize and advance the religious mission of sectarian schools," 413 U.S. at 779-80, crossed the line between church and state drawn by the Establishment Clause. Although the Wisconsin Supreme Court acknowledged that the Amended MPCP "closely parallels" the New York program, it concluded that the two programs were distinguishable. Its reasoning in this regard cannot bear scrutiny, and, in point of fact, the highest court of the State of Wisconsin has rendered a constitutional decision that is in direct and irreconcilable conflict with a decision of this Court.

Nyquist is this Court's last word on the constitutionality of private-school voucher programs such as the Amended MPCP. But the jurisprudential situation is complicated by the fact that, in several post-*Nyquist* cases, this Court has sustained the constitutionality of programs that, while factually removed from those at issue here and in *Nyquist*, provided various types of aid to students who attended sectarian private schools. These intervening Establishment Clause cases have led to the suggestion that *Nyquist* no longer is good law. Whether that is so only this Court can decide, and it should grant certiorari in order to do so.

2. Resolution of the questions presented for review is important for practical as well as doctrinal reasons. Under the Amended MPCP, the State of Wisconsin will, during the 1998-99 school year alone, divert up to $70,000,000 of public funds from the Milwaukee Public Schools and use that money to pay for as many as 15,000 students to attend private schools, the overwhelming majority of which are pervasively sectarian. Moreover, efforts are underway to enact voucher programs elsewhere, and the national policy debate that is unfolding in these other forums is shrouded in what counsel for intervenors-de-

fendants in the instant case aptly has termed a "constitutional cloud." [5] Because this case poses the Establishment Clause question raised by voucher programs in direct and pristine form, it offers this Court a timely and appropriate opportunity to resolve the uncertainty, so that the debate over voucher programs can focus on education policy rather than constitutional law.

I. THE DECISION OF THE COURT BELOW IS IN DIRECT AND IRRECONCILABLE CONFLICT WITH THE DECISION OF THIS COURT IN *COMMITTEE FOR PUBLIC EDUCATION v. NYQUIST*; THIS COURT SHOULD CLARIFY WHETHER THAT CASE CONTINUES TO STATE THE LAW

A. In 1972, the State of New York enacted a private-school voucher program that provided tuition reimbursements for children from low-income families who attended private schools, including both sectarian and nonsectarian private schools. In enacting this program, the New York legislature found that a "healthy competitive and diverse alternative to public education is not only desirable but indeed vital to a state and nation that have continually reaffirmed the value of individual differences." [6] In defending the program, New York emphasized as well the plight of children attending "the inner city poverty area schools" which are "undersized and overcrowded." [7] These are essentially the same justifications that have been advanced for the Amended MPCP.

Notwithstanding these asserted justifications, this Court held in *Nyquist* that the New York voucher program violated the Establishment Clause. The *Nyquist* Court's analysis began from the premise that "[t]here can be no

---

[5] Clint Bolick, *School Choice and the Supreme Court*, Wall St. J., June 15, 1998, at A29.

[6] New York Laws 1972, c. 414 § 2, *quoted in Nyquist*, 413 U.S. at 764.

[7] Brief of Appellee Warren M. Anderson at 14, *Nyquist*, *supra*.

question that these grants could not, consistently with the Establishment Clause, be given directly to sectarian schools," because the program contained no "effective means of guaranteeing that the state aid derived from public funds w[ould] be used exclusively for secular, neutral, and nonideological purposes." 413 U.S. at 780.

This Court went on to reject the proposition that "deliv[ering]" the tuition reimbursements "to parents rather than schools is of such significance as to compel a contrary result." *Id.* at 781. As this Court explained, despite the fact that the aid was channeled to religious schools through parents,

> it is precisely the function of New York's law to provide assistance to private schools, the great majority of which are sectarian. By reimbursing parents for a portion of their tuition bill, the State seeks to relieve their financial burdens sufficiently to assure that they continue to have the option to send their children to religion-oriented schools. . . . [T]he effect of the aid is unmistakably to provide desired financial support for nonpublic, sectarian institutions. [*Id.* at 783.]

The instant case does not just "closely parallel[]" *Nyquist*, as the court below acknowledged, *see supra* p. 9; it is on all fours with *Nyquist*. Indeed, the unconstitutionality of the Amended MPCP follows *a fortiori* from *Nyquist*. Under the New York voucher program, the maximum tuition reimbursement any parent could receive was the lesser of $100 or 50% of the amount of tuition actually paid by the parent. In contrast, the Amended MPCP covers the full cost of a private school education (up to the amount of state per-pupil assistance), and will result in payments to most participating sectarian private schools in *excess* of the tuition those schools in fact charge. *See supra* pp. 4-5. Simply stated, if the Establishment Clause does not allow the State of New York to provide $100 tuition reimbursements to parents who enroll their children in pervasively sectarian

private schools because such payments impermissibly advance religion, the Establishment Clause surely does not allow the State of Wisconsin to pay over $3,000 for children to attend such schools.[8]

Conversely, if—as the Wisconsin Supreme Court held—the Establishment Clause requires only "neutrality" and "indirection" (as defined by the court below), *see supra* pp. 8-9, the New York private-school voucher program easily should have passed constitutional muster. Like the Amended MPCP, the New York program "provide[d] public aid to both sectarian and nonsectarian institutions . . . on the basis of neutral, secular criteria that neither favor nor disfavor religion." App. 25a. And, again like the Amended MPCP, the financial aid that was provided to the sectarian private schools under the New York program was "indirect" in the sense that the aid was received "only as a result of numerous private choices of the individual parents of school-age children." *Id.*[9] The fact that the principles that informed the decision of the Wisconsin Supreme Court in this case would have required a different outcome in *Nyquist* confirms that the decision below is in direct and irreconcilable conflict with *Nyquist*.[10]

---

[8] Moreover, in contrast to the Amended MPCP, the New York voucher program did not require parents to endorse the checks they received to the private schools, and thus did not result in any direct flow of state funds to the schools.

[9] The Wisconsin court's exclusive reliance on the manner in which public funds reached the sectarian schools as its basis for concluding that such funding was "indirect" cannot be squared with this Court's holdings in funding cases that look not only to the manner of payment but also scrutinize whether public funding "relieve[s] sectarian schools of costs they otherwise would have borne in educating their students," thereby resulting in " 'the direct and substantial advancement of religious activity.' " *Zobrest v. Catalina Foothills School Dist.*, 509 U.S. 1, 12 (1993) (quoting *Meek v. Pittenger*, 421 U.S. 349, 366 (1975)).

[10] Although, as the Wisconsin Supreme Court noted, the New York voucher program "directed aid exclusively to private schools

Nor is *Nyquist* the only decision of this Court that cannot be squared with the Wisconsin Supreme Court's view of the Establishment Clause. As this Court recently observed, "special Establishment Clause dangers [are posed] where the government makes direct money payments to sectarian institutions." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 842 (1995). Consistent with that observation, this Court repeatedly has held that such aid violates the Establishment Clause unless it is restricted in a manner that effectively prevents its use for religious purposes.[11] The decision below conflicts with these decisions as well.

---

and their students," App. 19a n.9, the same is true here: the Amended MPCP also provides aid "exclusively to private schools and their students"; indeed, the very point of the Program is to enable low-income students in Milwaukee to enroll in private schools instead of remaining in the Milwaukee Public Schools.

[11] *See Sloan v. Lemon*, 413 U.S. 825 (1973) (companion case to *Nyquist*); *Tilton v. Richardson*, 403 U.S. 672, 683 (1971) (plurality) (finding insufficiently protective a 20-year ban on the religious use of a facility built with government aid); *Levitt v. Committee for Public Educ.*, 413 U.S. 472, 480 (1973) (striking down reimbursement to sectarian private schools for testing expenses because "no means are available, to assure that internally prepared tests are free of religious instruction"); *Meek v. Pittenger*, 421 U.S. 349, 365-366 (1975) (striking down material and equipment loan program to pervasively sectarian private schools and concluding that substantial aid to such institutions "necessarily results in aid to the sectarian school enterprise as a whole"); *Wolman v. Walter*, 433 U.S. 229, 254 (1977) (striking down provision of field trip funds to sectarian schools because "public school authorities will be unable adequately to insure secular use of the field trip funds"); *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373 (1985) (striking down Community Education program under which sectarian school teachers received public funds to teach secular subjects in their own pervasively sectarian schools), *overruled in other part, Agostini v. Felton*, 117 S. Ct. 1997 (1997); *Essex v. Wolman*, 409 U.S. 808 (1972) (mem.), *aff'g* 342 F. Supp. 399 (S.D. Ohio 1972); *cf. Bowen v. Kendrick*, 487 U.S. 589, 621 (1988) (remanding for determination of whether government grant program unconstitutionally directed aid to "'pervasively sectarian' religious institutions, such as we have held parochial schools to be"); *Roemer v. Board of Public*

Moreover, the decision of the Wisconsin Supreme Court also is at odds with decisions of the highest courts of other states. These courts—consistent with *Nyquist* and this Court's other on-point precedents—have struck down, under the Establishment Clause, programs providing unrestricted tuition payments or grants for attendance at sectarian private schools.[12]

B. Seen through the lens of *Nyquist*, this is an open-and-shut case on the merits. Apparently recognizing this, intervenors-defendants Parents for School Choice argued in the court below that in light of this Court's more recent Establishment Clause cases *Nyquist* should be treated as an "aberration." While we firmly reject that premise, the key point for present purposes is that this Court—as it recently has reiterated—retains for itself "the prerogative of overruling its own decisions." *Agostini v. Felton*, 117 S. Ct. 1997, 2017 (1997) (quoting *Rodriguez de Quijas*

Works, 426 U.S. 736, 746-48 (1976) (upholding general aid program for secondary educational institutions on the ground that aid was limited to secular purposes); *Hunt v. McNair*, 413 U.S. 734, 743-44 (1973) (upholding financing assistance to sectarian college on the ground that aid was restricted in a manner that prevented its use for religious purposes); *Board of Educ. v. Allen*, 392 U.S. 236, 244-48 (1968) (upholding textbook loan program for private schools that was limited to secular purposes).

[12] *See Almond v. Day*, 89 S.E.2d 851, 857-58 (Va. 1955) (program of state tuition payments on behalf of children of war veterans violated Establishment Clause insofar as payments were made to sectarian private schools); *People ex rel. Klinger v. Howlett*, 305 N.E.2d 129 (Ill. 1973) (striking down program under which state paid a portion of tuition expenses incurred by low-income parents who sent their children to private schools, including sectarian private schools); *Weiss v. Bruno*, 509 P.2d 973, 981-984 (Wash. 1973) (tuition payments on behalf of students enrolled in primary, secondary, or post-secondary educational institutions violated Establishment Clause because payments were unrestricted and were directed predominantly to sectarian schools); *State ex rel. Rogers v. Swanson*, 219 N.W.2d 726, 735 (Neb. 1974) (grants to students attending private colleges violated Establishment Clause because most recipient colleges were sectarian and no restrictions were placed on use of grants).

v. Shearson/American Express, Inc., 490 U.S. 477, 484 (1989)). In view of the questions that have been raised about the continuing vitality of *Nyquist*—as evidenced by the decision below—it is time for this Court to say clearly whether or not that case still is good law.

The attack on *Nyquist* is bottomed on five cases decided by this Court during the past fifteen years: *Mueller v. Allen*, 463 U.S. 388 (1983), sustaining a provision of Minnesota's tax code allowing all taxpayers to deduct from their taxable income up to $700 in educational expenses, including expenses for sectarian private school tuition; *Witters v. Washington Dep't of Serv. for Blind*, 474 U.S. 481 (1986), and *Zobrest v. Catalina Foothills School Dist.*, 509 U.S. 1 (1993), upholding programs of public assistance to disabled students, including students enrolled in sectarian private schools; *Rosenberger, supra*, holding that a state university could make disbursements from a student activities fund to cover printing costs of a religious student group; and *Agostini, supra*, holding that public school teachers could provide remedial educational services on the premises of sectarian private schools.

Although, as the Wisconsin Court of Appeals pointed out, the foregoing cases "do not encompass facts nearly so close to those before us as did *Nyquist*," App. 83a, there are those—including the court below—who read these cases for the broad principle that *any* state support for religious education is constitutionally acceptable so long as it "distributes benefits neutrally . . . without regard to the 'sectarian-non-sectarian, or public-nonpublic nature' of the school the child attends," and reaches sectarian schools "only as a result of the private decision of individual parents." *Zobrest*, 509 U.S. at 10; *see also Mueller*, 463 U.S. at 398-99; *Witters*, 474 U.S. at 488; *Agostini*, 117 S. Ct. at 2014. As Professors Eisgruber and Sager observe in a recent article in the *Supreme Court Review*:

> Under the broadest principle . . . articulated in *Agostini*—pursuant to which no constitutional vio-

> lation exists if public benefits flow to religious schools as a result of private choices—the tuition voucher programs from Wisconsin and Ohio would survive constitutional challenge, since parents decide whether to send their children to religious or secular schools.[13]

If that indeed is the controlling constitutional principle, then *Nyquist* no longer is good law. Under that principle, any and all financial aid to private schools that is geared to the schools' enrollment would pass constitutional muster—including even direct per-pupil grants—because the sectarian private schools' share of such aid necessarily would be the "result of private choice," and hence "neutral."

But, as Professors Eisgruber and Sager also point out, that is not the only reading of *Agostini* and its antecedent cases:

> If . . . it matters whether state dollars reach religious coffers, the [voucher] cases[s] would go the other way: unlike in *Agostini* and *Rosenberger*, there is no doubt that the voucher system adds public money to the accounts of religious educational programs.[14]

Although a full exploration of this Court's post-*Nyquist* Establishment Clause jurisprudence must be reserved for briefing on the merits, we submit that this latter interpretation reflects a proper reading of these more recent cases —and that these cases are in full accord with the holding of *Nyquist*.

It is very much to the point that none of the cases from *Mueller* to *Agostini* upholds a program that is even remotely like the Amended MPCP in terms of the manner

---

13 Christopher L. Eisgruber & Lawrence G. Sager, *Congressional Power and Religious Liberty After City of Boerne v. Flores*, 1997 Sup. Ct. Rev. 79, 126-27.

14 *Id.* at 127.

and extent of the state aid provided to sectarian private schools. In *Mueller*, *Witters*, and *Zobrest*, the benefits flowing to sectarian private schools were, at most, "attenuated." *Mueller*, 463 U.S. at 399. In *Rosenberger*—a case involving a public forum in which the government promoted speech by others—this Court emphasized that "[o]ur decision . . . cannot be read as addressing an expenditure from a general tax fund." 515 U.S. at 841. Indeed, contrary to the Wisconsin Supreme Court's embrace of the "neutrality principle" as the key to the Establishment Clause, *Rosenberger* "neither trumpets the supremacy of the neutrality principle nor signals the demise of the funding prohibition in Establishment Clause jurisprudence." *Id.* at 852 (O'Connor, J., concurring).

References to *Agostini* likewise are far off the mark, inasmuch as that case did not involve the transfer of any public funds to sectarian private schools. And, in *Agostini* this Court was able to rely on the assurances that, under the Title I program there at issue, "[n]o [public] funds ever reach the coffers of religious schools," 117 S. Ct. at 2013; the publicly financed educational services would be provided by public school teachers who were "accountable only to their public school supervisors," *id.* at 2004; and the program would not have the impermissible consequence of "reliev[ing] sectarian schools of costs they otherwise would have borne in educating their students." *Id.* at 2013 (quoting *Zobrest*, 509 U.S. at 12).

None of that can be said about the Amended MPCP. Indeed, the Amended MPCP more nearly resembles the Community Education program found unconstitutional in the portion of *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373 (1985), that was not overruled in *Agostini*. As Justice O'Connor explained in her separate opinion in *Ball*:

> When full-time parochial school teachers receive public funds to teach secular courses to their parochial

> school students under parochial school supervision, I agree that the program has the perceived and actual effect of advancing the religious aims of the church-related schools. This is particularly the case where, as here, religion pervades the curriculum and the teachers are accustomed to bring religion to play in everything they teach. [*Id.* at 399-400.]

Voucher programs such as the Amended MPCP, which provide unrestricted funds that the sectarian private schools are entirely free to use for sectarian as well as secular purposes, go even farther in "advancing the religious aims of the church-related schools" than was the case in *Ball*. These voucher programs implicate all of the core concerns of the Establishment Clause: by offering publicly funded sectarian private education as the principal alternative to public schooling, they "can only be regarded as . . . 'advancing' religion," *Nyquist*, 413 U.S. at 788, and creating a " 'symbolic union' between church and state." *Agostini*, 117 S. Ct. at 2012.

Accordingly—whether viewed as a matter of *stare decisis* or as a question of first impression—the Amended MPCP cannot stand.

What is of primary importance for present purposes, however, is not whether we are correct on the merits, but the very fact that this Court's post-*Nyquist* Establishment Clause jurisprudence has proved susceptible to such radically differing interpretations. Only this Court can determine authoritatively which reading of the case law—and of the Establishment Clause itself—is correct. *Agostini*, 117 S. Ct. at 2017. As a matter of constitutional doctrine, that is a question eminently worthy of this Court's consideration; and, as we demonstrate in Point II below, in the real world of practical affairs there is a clear and pressing need for a prompt answer.

II. THIS COURT SHOULD DETERMINE WHETHER THE AMENDED MPCP—WHICH IS AN IMPORTANT PROGRAM IN ITS OWN RIGHT—IS CONSTITUTIONAL, AND SHOULD ANSWER THE CONSTITUTIONAL QUESTION THAT SHROUDS THE NATIONAL POLICY DEBATE OVER VOUCHER PROGRAMS

On its own terms, the Amended MPCP is an important program that will have significant ramifications for taxpayers in the State of Wisconsin and for children in the City of Milwaukee. Under the Program, the State of Wisconsin will divert millions of tax dollars from the Milwaukee Public Schools each school year (up to $70 million during the 1998-99 school year alone) to pay for as many as 15,000 students to attend private schools, the overwhelming majority of which are pervasively sectarian. The Amended MPCP is, moreover, a limited program, which now operates only in a single public school district. Similar programs well may be adopted in other public school districts throughout the State, with a concomitant increase in both the expenditure of public funds and student participation.

Nor are voucher programs a uniquely Wisconsin phenomenon. Efforts to enact similar programs have been undertaken in at least twenty other states, and in the United States Congress as well.[15] According to voucher proponents, the decision below has "thrown wide open the door" to such programs,[16] and it will enable them to "spread like wildfire."[17] The national policy debate

---

[15] *See* Harlan A. Loeb & Debbie N. Kaminer, *God, Money and Schools: Voucher Programs Impugn the Separation of Church and State*, 30 J. Marshall L. Rev. 1, 2-3 (1996).

[16] *See* Pete Hutchison, *The Right Education Revolution*, Washington Times, June 15, 1998, at A21. Mr. Hutchison is counsel for one of the groups of intervenors-defendants in this case.

[17] *See* Ethan Bronner, *Wisconsin Court Upholds Vouchers in Church Schools*, N.Y. Times, June 11, 1998, at A3 (quoting William

that is unfolding in these other forums is obscured by the unresolved questions over the constitutionality of voucher programs.[18] All parties to this debate, whatever their views as to the desirability or constitutionality of voucher programs, want—and need—to have those questions resolved.

If, as we believe, the Establishment Clause prohibits the use of public funds to pay for children to attend sectarian private schools, this Court should reaffirm *Nyquist* now, so that those genuinely concerned with improving the quality of education in the United States will be able to re-focus their energies on measures that pass constitutional muster, and a needless, divisive debate between supporters of sectarian education and supporters of public education can be avoided. Alternatively, if *Nyquist* does

---

Mellor III, President, Institute for Justice). Mr. Mellor and the Institute for Justice serve as counsel for one of the groups of intervenors-defendants in this case.

[18] Indeed, to our knowledge, every school voucher program that allows for the unrestricted payment of public funds to sectarian private schools has been subject to immediate challenge on the basis of the Establishment Clause and/or analogous state constitutional provisions. *See Simmons-Harris v. Goff*, No. 96APE08-982, 1997 WL 217583 (Ohio Ct. App., May 1, 1997) (holding unconstitutional voucher program similar to Amended MPCP), *appeal pending*, No. 97-1117 (Ohio); *Chittenden Town School Dist. v. Vermont Dep't of Educ.*, No. S0478-96 RcC (Vt. Superior Ct., Rutland Cty., June 27, 1997) (holding that state payment of tuition for sectarian private schools violates Establishment Clause), *appeal pending*, No. 97-275 (Vt.); *Giacomucci v. Southeast Delco School Dist.*, No. 98-5805 (Pa. Common Pleas Ct., Delaware Cty.) (pending challenge to local voucher plan). *See also Kotterman v. Killian*, No. CV-97-0412-SA (Ariz.) (pending challenge to tax credit for contributions to private school scholarship funds); *Bagley v. Maine Dep't of Educ.*, No. CV-97-484 (Me. Superior Ct., Apr. 20, 1998) (rejecting Free Exercise challenge to limitation of voucher program to nonsectarian private schools), *appeal pending*, No. CUM-98-281 (Me.); *Strout v. Commissioner, Maine Dep't of Educ.*, No. 97-259-P-H (D. Me., Aug. 11, 1998) (same), *appeal pending*, No. —— (1st Cir.).

not state the controlling constitutional principle, this Court should overrule it now, so that those who oppose the use of public funds to pay for religious education will be required to make their case solely on the basis of education policy, and not rely on a precedent of this Court that no longer is good law.

Unlike other pending cases challenging voucher programs—which raise variations on the theme posed here in contexts that are *sui generis*, or which for other reasons may not provide this Court with a timely and appropriate vehicle for resolving the constitutional questions raised by voucher programs [19]—this case presents those questions in direct and pristine form. The Amended MPCP involves the systematic expenditure of millions of tax dollars each school year to pay for thousands of elementary and secondary school students to attend private schools, the overwhelming majority of which are pervasively sectarian, and the private schools that receive these tax dollars are free to use them for whatever secular or religious purposes they choose. This Court should grant certiorari to answer the important First Amendment questions raised by this and similar programs, and to clarify the constitutional parameters of the unfolding debate over how best to improve the education of our nation's children.

---

[19] *See supra* note 18. The Vermont and Maine cases involve facts peculiar to small school districts in those two states; the Arizona case challenges a tax credit that, while similarly motivated, is factually somewhat removed from the typical voucher program; and the plaintiffs in the Pennsylvania case have limited themselves to state constitutional (and statutory) issues. Only the Ohio case involves a program that parallels the Amended MPCP and the *Nyquist* program, but that case may—as the plaintiffs therein have urged—be decided on state constitutional grounds.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JEFFREY J. KASSEL
LAFOLLETTE & SINYKIN
One East Main Street
Suite 500
P.O. Box 2719
Madison, WI 53701
(608) 257-3911

WILLIAM H. LYNCH
312 East Wisconsin Ave., #210
Milwaukee, WI 53202
(414) 289-9200

RICHARD PERRY
RICHARD SAKS
PERRY, LERNER & QUINDEL
823 North Cass Street
Milwaukee, WI 53202
(414) 272-7400

BRUCE MEREDITH
CHRIS GALINAT
WISCONSIN EDUCATION ASSOCIATION COUNCIL
P.O. Box 8003
Madison, WI 53708
(608) 276-7711

ELLIOT M. MINCBERG
JUDITH E. SCHAEFFER
PEOPLE FOR THE AMERICAN WAY FOUNDATION
2000 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 467-4999

TIMOTHY HAWKS
SHNEIDMAN, MYERS, DOWLING & BLUMENFIELD
(Wisconsin Federation of Teachers)
700 West Michigan, Suite 500
P.O. Box 442
Milwaukee, WI 53201
(414) 271-8650

ROBERT H. CHANIN
(Counsel of Record)
DAVID M. SILBERMAN
JOHN M. WEST
ALICE O'BRIEN
BREDHOFF & KAISER, P.L.L.C.
1000 Connecticut Ave., N.W.
Suite 1300
Washington, D.C. 20036
(202) 833-9340

PETER M. KONEAZNY
AMERICAN CIVIL LIBERTIES UNION OF WISCONSIN FOUNDATION, INC.
207 East Buffalo Street
Suite 325
Milwaukee, WI 53202
(414) 272-4032

STEVEN R. SHAPIRO
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street
New York, N.Y. 10004
(212) 549-2500

STEVEN K. GREEN
AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE
1816 Jefferson Place, N.W.
Washington, D.C. 20036
(202) 466-3234

JAMES H. HALL, JR.
HALL, PATTERSON & CHARNE
324 East Wisconsin Ave., #1200
Milwaukee, WI 53202
(414) 273-2001

Attorneys for Petitioners